



O'Melveny & Myers LLP
400 South Hope Street
18th Floor
Los Angeles, CA 90071-2899

T: +1 213 430 6000
F: +1 213 430 6407
omm.com

File Number:

September 7, 2023

Jim Bowman
D: +1 213 430 6569
jb Bowman@omm.com

VIA ELECTRONIC DELIVERY AND COURT FILING

The Honorable Katharine H. Parker
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 750
New York, New York 10007

Re: United States of America v. Anthem, Inc., 1:20-cv-02593-ALC-KHP

Dear Judge Parker:

We represent Defendant Anthem, Inc. in the above-captioned matter. We write concerning a discovery dispute between the parties that we ask the Court to address at the case management conference that is currently scheduled for September 19, 2023.

In this False Claims Act (“FCA”) action, Plaintiff alleges that Anthem presented claims for payment to the Centers for Medicare & Medicaid Services (“CMS”) that Anthem knew were false and that were material to CMS’s decision to pay Anthem for health insurance coverage that Anthem provided to beneficiaries of the Medicare Advantage program. Among other defenses, Anthem disputes that it submitted claims for payment that were false. Anthem seeks leave to serve six interrogatories pursuant to Local Rule 33.3(b) that ask Plaintiff to identify the specific claims for payment that it contends are false as well as the facts supporting its allegation that those claims for payment are false. Anthem previewed these proposed interrogatories to Plaintiff on April 21, 2023 in the hopes that Plaintiff would consent to respond to those interrogatories at the outset of discovery. Since that time, the parties have met and conferred on this dispute on multiple occasions, including as recently as this week, but we have not been able to resolve this dispute. Both parties agree they have reached an impasse on this issue. While it is unclear to Anthem that these proposed interrogatories are of a type requiring prior leave under Local Rule 33.3(b), Anthem has advised Plaintiff that it will seek leave from the Court to serve these interrogatories out of abundance of caution. Plaintiff does not consent to that request.

In light of this discovery dispute, and consistent with Rule II(c) of the Court’s Individual Practices and Procedures, Anthem respectfully requests that the parties be authorized to file position statements of no more than three pages on this disputed issue on September 12, 2023, one week in advance of the September 19, 2023 case management conference. Anthem submits that these position statements would be helpful to the Court’s understanding of this dispute by explaining the content and purpose of these interrogatories as well as the parties’ separate rationales for their respective positions.



Plaintiff's Position on Anthem's Request for Briefing. When asked for its position on Anthem's request to file position statements, Plaintiff said it defers to the Court as to which means the Court wishes to decide the dispute but does not object to submitting three-page letters if that is the Court's preference in advance of the September 19, 2023 conference.

Anthem thanks the Court for its consideration of this request.



Dated: September 7, 2023

Respectfully submitted,

By: /s/ James A. Bowman

JAMES A. BOWMAN, *Pro Hac Vice*
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
jbowman@omm.com

K. LEE BLALACK, II, *Pro Hac Vice*
ANWAR GRAVES, *Pro Hac Vice*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
lblalack@omm.com
agraves@omm.com

DAVID DEATON, *Pro Hac Vice*
O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
Newport, CA 92660
Telephone: (949) 823-6900
Facsimile: (949) 823-6994
ddeaton@omm.com

HEYWARD BONYATA, *Pro Hac Vice*
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Telephone: (803) 255-9655
heyward.bonyata@nelsonmullins.com

JOHN MARTIN, *Pro Hac Vice*
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Telephone: (803) 255-9241
john.martin@nelsonmullins.com

Attorneys for Defendant Anthem, Inc.

cc: Assistant United States Attorney Jeannette Anne Vargas, Esq.
Assistant United States Attorney Rebecca Sol Tinio, Esq.
Assistant United States Attorney Peter Max Aronoff, Esq.
Assistant United States Attorney Zachary Bannon, Esq.
Assistant United States Attorney Charles Salim Jacob, Esq.
Assistant United States Attorney Adam M. Gitlin, Esq.
Assistant United States Attorney Dana Walsh Kumar, Esq.